

From: Everett Ball <evgball@sbcglobal.net>
To: <commentletters@waterboards.ca.gov>
Date: 1/18/2010 10:54 AM
Subject: Fwd: SWRCB Frost wkshop 1-19-10
Attachments: Part.001

Please deliver this immediately to Mr. Charles Hoppin, and copies to Victoria Whitney and Frances Spivy-Weber in time for the workshop on Tuesday, Jan. 19, 2010. I am told you must consider any correspondence received up to 5 p.m. on Jan 19th. I tried to fax this today but it is a holiday and I was unable to locate a fax number. Thank you.

Begin forwarded message:

>> Subject: SWRCB Frost wkshop 1-19-10

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>> Ball Vineyards in Knights Valley

>>

>> since 1889

>>

>>

>> Mrs. Gloria F. Ball

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>>

>> 16970 Hwy 128

>>

>>

>> Calistoga, CA 94515

>>

>>

>> January 18, 2010

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>> Mr. Charles Hoppin, Chairman

>> State Water Resources Control Board

>> P. O. Box 100

>> Sacramento, CA 95810-0100 FAX

>>

>> Re: 1/19/10 SWRCB Workshop on Russian River Frost Protection Draft

>> Regulation, paragraph (c) and (e) etc.

>>

>> Dear Chairman Hoppin and Board Members:

>>

>> I have studied the January 13th letters sent to you by Lee Howard for

>> the Russian River Flood Control and Water Conservation Improvement

>> District and the joint letter from the Sonoma County and the

>> Mendocino County Farm Bureaus. I have also down loaded the Draft

>> Text of Proposed Regulations concerning Frost diversions from the

>> Russian River stream system and groundwater sources. Your draft

>> annotates Section 2, Article X, of the California Constitution.

>>

>> There are a number of legal challenges that will take place with your

>> assumption of omnipotent control of all diversionary water in

>> California, no matter what the source or purpose. Your agency was

>> formed in 1914 under agreement that water rights prior to that date

>> would not be under your jurisdiction, yet through the our many years
>> of involvement with your staff they continue to ignore that boundary.
>> Because of your lack of understanding, I take great exception to
>> item (e) that requires compliance for all water right permits and
>> licenses for diversions from the Russian River stream system.
>>
>> The 17,000 acres on the South boundary of Knights Valley was the
>> Mexican land grant given to Jose de los Santos Berryessa in 1843.
>> This effects Yellow Jacket Creek, Franz Valley and Little Franz
>> Creeks, Redwood Creek and portions of Maacamas Creek. This land
>> grant and others all over the State fall under the Treaty of
>> Guadalupe Hildago in 1847 between the Mexican government and the
>> United States Government, among other things the waters therein are
>> the property of the land owners thru which the water flows.
>> Ownership is intrinsic for surface and ground water. This was the
>> agreement between the two countries three years before our State
>> Constitution was written and has not been altered. In our case and a
>> few others who divert water from Yellow Jacket Creek there is another
>> court case tried in the California Supreme Court; Holmes vs. Nay, (S.
>> F. No 9330, June 16, 1921) decision June 21, 1926 (see the courts
>> definition of beneficial use) validating our rights on the land grant
>> but limiting the use of water on a Federal homestead 100 acre parcel
>> at the headwaters of the Yellow Jacket. Because of the Treaty the
>> court realized it only had the jurisdiction to adjudicate on the
>> Federal homestead parcel. I believe you still do not have the right
>> to do so in our area. Our patent under the Treaty was granted by the
>> U. S. Congress in 1873 and stands today. Thousands of acres in
>> California fall under this similar situation.
>>
>> Our situation is this: We have vineyard on the valley floor that we
>> drip irrigate in the summer; we do not frost protect at all and with
>> good results, and we use our remaining limited right for domestic
>> use. My concern is that your agency has no way to sort out the legal
>> differences between diverters, nor will you have the manpower, money,
>> or software systems to monitor diversions to meet the needs of the
>> weather in any timely fashion. You will never have the police force
>> available to oversee this effectively here or Statewide. If I have
>> learned anything about political action lately it is this; the voter
>> can always, and ultimately, outwit the government. Better to have
>> voluntary agreement and work in partnership with the private sector
>> and actually be effective.
>>
>> 1. Our waterways have come to this problem through decades of
>> mis-management in the delays and denials from the SWRCB for
>> reservoirs on private property. (You have a backlog of 20 years
>> worth of applications?) What better way to mitigate the wildlife
>> needs and the human needs than to store water for short term use such
>> as frost protection without taxpayers investment in agency
>> regulation? The only viable solution at this 11th hour is management
>> by local grower groups who know the weather, the agriculture needs
>> and can do so with fiscal responsibility. You have written totally
>> onerous draft regulations. They should be substituted with
>> recommendations for BMP's without penalties.
>> This draft of regulations will cost billions to administer and be
>> useless with return of normal rainfall. Our salmonid decline is
>> drought driven and that will ebb and flow as it has for ions before

>> man existed in California.
>> By the time the proposed regulations and systems are working the
>> crisis may be over.
>>
>> In the interim, why not add temporary hatcheries? I have read the
>> hatch rate without predators and weather conditions is nine times
>> higher than in nature.
>>
>> 2. (c) My other most pressing concern is your theory that you have
>> the right to regulate ground water and dictate its purpose on private
>> land. Water that is attached to a piece of rural property is part of
>> the value that was paid for in the purchase. To lose that control by
>> the owner is a taking by the government and cannot be separated from
>> the parcel. This cannot be described as eminent domain or for the
>> benefit of a government to enhance its tax base as in Kelo vs. the
>> City of New London. Certainly your perception is a blatant
>> misinterpretation of the U. S. Constitution Bill of Rights, articles
>> 4 and 5. By the time this is restrained and decided in a court we
>> will have gone thru an El Nino and another drought. In any event,
>> you are confusing the process of our judicial system: It is "innocent
>> until proven guilty". The State must expend the funds to prove a
>> subterranean stream exists, individually, and on each parcel in
>> question, not based on some esoteric engineering study. Would not a
>> series of hatcheries along each major tributary be more timely and
>> efficient?
>>
>> I agree wholeheartedly with the two letters previously mentioned.
>> Let the agriculturists mitigate the problems outlined by NOAH. Write
>> recommendations if you must, but local involvement will be more
>> effective and less costly. This is not an issue that should be
>> administered by any tax payer supported agency unless it proves not
>> to work after some years trial or a change in the weather cycles.
>>
>> To recap: 1. Scrap your regulations. Write recommendations for a
>> trial
>> experiment over several years of joint
>> partnership. Avoid
>> adamant language, it will bring on the legal
>> challenges.
>> 2. Work quickly to clear permits for off stream
>> ponds on
>> private property. California needs water in
>> storage ASAP for
>> agriculture & ground water recharge without
>> public funds.
>> 3. Fund temporary hatcheries until nature rebounds,
>> as it has
>> for thousands of years.
>>
>> I am disappointed in not being able to attend your workshop Tuesday
>> but I will follow thru with friends who will attend. Thank you for
>> your time and attention over my concerns. Please make the workshop
>> effective and time sensitive going forward to a solution. Thank you.
>>
>> Sincerely,
>>

(signed)

>>

>> Gloria F. Ball

>> 16970 Highway 128

>> Calistoga, Ca 94515 phone: 707-942-5571

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>> cc: Frances Spivy-Weber, Vice Chair

>> Victoria Whitney

>> Sonoma County Farm Bureau

>> Mendocino County Farm Bureau

>> Sonoma County Land Rights Coalition

>> Paul Kelley, Supervisor, Sonoma County

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